IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Regular Second Appeal No. 1056 of 2006

Date of decision: 04.12.2006

Major Sucha Singh Rana

..... Appellant.

Versus

State of Punjab and another

..... Respondents.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Mr.Ajay Tiwari, Advocate
for the appellant.

Mr. G.C. Gupta, D.A.G. Punjab
for the respondents.

P.S. PATWALIA, J. (ORAL)

The substantial question of law arises for determination in this regular second appeal is "as to whether the appellant-plaintiff is entitled to pension for the period when he served in the State of Punjab by rounding off the fraction of more than six months as a completed year".

The present regular second appeal has been filed by the plaintiff against the concurrent findings recorded by the trial Court and the lower Appellate Court dismissing the suit filed by him wherein he had prayed for grant of pension consequent upon his superannuation as Deputy Director Sainik Welfare from the service of State of Punjab on 30.06.1993.

The plaintiff retired from the services of Armed forces as a Major in 1977. He applied for appointment as Secretary Zila Sainik Board in response to advertisement issued by Punjab Public Service Commission in 1982. He was selected and appointed as such on 01.08.1983. The post of Secretary Zila Sainik Board was later on re-designated as District Sainik Welfare Officer. The plaintiff served as such up to 30.06.1993 when he retired on attaining the age of superannuation. Therefore by the time the plaintiff retired from the service of State of Punjab he had completed 9 years 10 months and 21 days of service in the State of Punjab.

The only argument advanced by learned counsel for the petitioner before me is that in terms of provisions of Rule 6.1 of the Punjab Civil Service Rules, Volume II read with clarification issued by the State of Punjab on 17.08.1983 the fraction of a half year equal to three months and above has to be rounded off and shall be treated as a complete half year and reckoned as qualifying service for entitling the plaintiff to pension. Learned counsel for the appellant therefore contends that since the plaintiff had served for 9 years 10 months and 21 days the fraction of last year equally should be rounded off to a completed year. Resultantly the plaintiff would have completed 10 years of service. It would be appropriate at this stage to reproduce Rule 6.1 of the Punjab Civil Service Rules, Volume II as also the clarification issued on 17.08.1983 by the State of Punjab which read as under:-

> "6.1 The amount of pension that may be granted is determined by length of service as set forth in the succeeding sections of this Chapter. Fractions of a year equal to six months and above shall be treated as a completed six monthly period for the purpose of

calculation of any pension admissible to such an officer."

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"GOVERNMENT OF PUNJAB

DEPARTMENT OF FINANCE

Chandigarh the 17th August, 1983

All Heads of Departments

Commissions of Divisions

Registrar, Punjab and Haryana High Court.

District and Sessions Judge.

All Deputy Commissioners in the State

Sub: Calculating the length of Qualifying service for retirement benefits.

Sir,

I am directed to say that in accordance with the existing provision of rule 6.1 of Punjab Civil Services Rule, Volume II fraction of a year equal to six months and above be treated as a completed six monthly period for the purpose of calculation of pension of a Govt. employee. The Governor of Punjab is now pleased to decide that in calculating the length of qualifying service for the purpose of pension a fraction of a year equal to three months and above shall be treated as a completed one half year and reckoned as qualifying service for determining the amount of pension.

Necessary amendment to the rules will be issued in due course and the provisions of the relevant rules may be assumed to have been modified accordingly.

Yours faithfully,
(S.M. Dua)
Deputy Secretary to Govt. of Punjab

Dated:Chandigarh, 17th August, 1983"

I need not examine the contention as raised by the counsel for the appellant on first principle. A Division Bench of this Court has examined an identical proposition in the light of Rule 6.1 of the Punjab Civil Service Rules reproduced herein above as also the circular dated 17.08.1983 also reproduced herein above, in Civil Writ Petition No. 8012 of 2003 Amrik Singh and Anr. vs. State of Punjab and Ors. decided on 08.07.2004 and concluded that the period of 9 years 9 months and 17 days rendered by the petitioner in that writ petition was to be rounded off as a result of which the petitioner in that writ petition had completed 10 years of service entitling him to pension. The relevant observations of the Division Bench are as hereunder:-

> "On notice of motion having been issued, respondents filed two separate replies. The stand taken by the respondents is that since the qualifying service of the petitioner is less than 10 years, therefore, he is not entitled to pension and death-cum-retirement Gratuity as per Rule 6.6 read with Rule 1.2 (13) of the Punjab Civil Services Rules, Volume II, which are further clarified by the Punjab Government vide letter dated 31.12.1997. However, these instructions have been clarified by the Government vide Annexure P-3 the relevant portion of which reads as under:-
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> > "I am directed to say that in accordance with the existing provisions of Rule 6.1 of Punjab Civil Service

Rules, Volume II, fraction of a year equal to six months and above is treated as a completed six monthly period for the purpose of calculating of pension of Govt. employee. The Governor of Punjab is now pleased to decide that in calculating the length of qualifying service for the purpose of pension, a fraction of a year equal to three months and above shall be treated as a completed one half year and reckoned as qualifying service for determining the amount of pension."

A perusal of the above clarification shows that three months period will be taken as a fraction for completed one half years whereas earlier six months period was taken as a fraction of a year. Since the petitioner was having 9 years 9 months 17 days of service in his credit, therefore, the petitioner has completed 10 years of service.

In view of the above discussion, the writ petition is allowed and the respondents are directed to pay the retiral benefits to the petitioner as per rules within a period of two months from the date that a certified copy of this order is supplied to them.

Sd/-
Nirmal Singh, Judge
Sd/-
H.S. Bedi, Judge"

A special leave petition filed by the State of Punjab against the aforesaid judgment was also dismissed on 24.03.2005 with the following observations:-

"Delay condoned.

The special leave petition is dismissed."

I therefore find that the controversy in the present case is completely covered by the ratio of the judgment rendered by Division Bench as aforesaid.

Learned counsel for the State of Punjab however contends that after the dismissal of the special leave petition before the Hon'ble Supreme Court the State Government has now issued a fresh circular on 01.08.2005. The said circular reads as hereunder:-

"To

All Heads of Department,
Commissioners of Divisions,
Registrar Punjab and Haryana High Court,
Deputy Commissioner in the State.

Dated, Chandigarh the 01.08.2005.

Subject: Clarification regarding determination of Government employees for calculating the length of qualifying service for retirement benefits.

Sir,

I am directed to refer to Government letter No. 16/42/83-F.R.(6)7291, dated 17th August, 1983 and to clarify that the period of three months or more but less than 6 months of qualifying service will be treated complete 6 monthly for retirement benefits only in those cases where the employee has completed 10 years of qualifying service as per provisions contained in rule 6.1 of C.S.R. Vol. II.

Yours faithfully

Sd/-
(Shyam Lal Sharma)

Endst. No.2/49/2003-2FPPC/6273 dated,Chandigarh the1.8.2005."

Learned counsel contends that the earlier instructions dated 17.08.1983 have now been clarified by the State to the effect that the period of three years or more than but less than six months of qualifying service will be treated as completed six months for retirement benefits only in those cases where the employee has already completed 10 years of qualifying service. He therefore submits that in view of this circular the appellant is not entitled to the benefit of pension as he has not completed 10 years of actual service. I further find no merit in this contention raised by learned counsel for the respondent for two reasons.

Firstly it is a settled principle that all executive orders operate prospectively. Thus even if the circular of dated 17.08.1983 is now clarified on 01.08.2005 the clarification would operate prospectively. The plaintiff in the present case had retired on 30.06.1993. At that time the instructions of 17.08.1983 were very much operative. The case of the plaintiff would therefore have to be considered in the light of instructions of 17.08.1983 and a clarification issued on 01.08.2005 would not affect the plaintiff's claim for pension.

Secondly Rule 6.1 of the Punjab Civil Service Rules, Volume II regulates the entitlement of an employee in the service of the State of Punjab for pension. A reading of Rule 6.1 of Punjab Civil Service Rules itself clearly shows that the Rule mandates that fraction of a year equal to six months and above shall be treated as a completed six monthly period for the purpose of calculation of pension admissible to such an Officer. The reading of the Rule itself makes it clear that fraction of a year beyond six months and above has to be treated as a completed six months period to

make pension "Admissible". Since this is the substantial rule regarding entitlement for pension the petitioner would be entitled to payment on the basis of this rule itself. To my mind the instructions dated 17.08.1983 was only making explicit what is implicit in the rule itself. Therefore even if the said instructions are clarified they would not effect the plaintiff's entitlement for pension which flaws from the reading of Rule 6.1 itself.

In view of the aforesaid reasons the question of law as framed in the opening paragraph of the judgment is answered in favour of the appellant.

This regular second appeal is accordingly allowed. The judgments passed by the lower courts are set aside. The appellant is held entitled to pension with effect from the date when he retired from service i.e. 01.07.1983 by treating him to have completed ten years of service. In case the appellant has drawn any amount in lieu of pension payable to him, the same shall be refunded by him within one month from the date of certified copy of this judgment is presented by the appellant along with his claim for pension. Let the pension and other benefits be released to the appellant within a period of three months from the date of presentation of a certified coy of this judgment along with complete pension papers. In case the pension is not released within three months from the date when a complete set of pension paper is presented by the appellant-petitioner along with certified copy of this judgment the same shall carry interest at the rate of 6% per annum from the date of petitioner's retirement up to the date the pension is actually paid to the petitioner.

December 04, 2006 **(P.S. PATWALIA)**
dinesh **JUDGE**